



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2012

Ms. L. Carolyn Nivens
Paralegal
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056

OR2012-15847

Dear Ms. Nivens:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 469812 (City's Ref.#: Hall/PD #2208).

The League City Police Department (the "department"), which you represent, received a request for a specified police report. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the*

Press, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, however, we find you have failed to demonstrate how any of the information you have marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the information it has marked under section 552.101 in conjunction with common-law privacy.

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). Subsections 552.108(a)(2) and 552.108(b)(2) except from disclosure information concerning an investigation that concluded in a result other than a conviction or deferred adjudication. *See id.* § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information fits within the claimed exception. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You claim subsections 552.108(a)(2) and 552.108(b)(2) of the Government Code for portions of the submitted information. You state this is an inactive case. However, you do not inform us this case has concluded in a final result other than a conviction or deferred adjudication. Thus, we find the department has failed to demonstrate the applicability of either

subsection 552.108(a)(2) or 552.108(b)(2) of the Government Code to the submitted information, and it may not be withheld on either basis.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the information we have marked under section 552.130 of the Government Code. However, you have failed to demonstrate the applicability of section 552.130 to any of the remaining information you have marked. Thus, the department may not withhold any of the remaining information under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 469812

Enc. Submitted documents

c: Requestor
(w/o enclosures)